

channel 259A, Monticello, Sullivan County, New York.^{4/} W276AQ is well outside of the predicted 1 mV/m contour of WXTM(FM).

SUMMARY OF OBSERVATIONS

Monitoring and measurements by the investigators show that the licensee of W276AQ is relaying aural programming material identified as "Juke Box Radio" from a studio located at 75 Second Street, Dumont, New Jersey, directly to FM translator station W276AQ(FM) and aired. This full-time local origination is being accomplished by use of a studio-to-transmitter-link (STL) operating on 95.1 MHz in violation of § 74.531 of the Commission's rules. W276AQ is also in violation of § 74.1231(b) of the rules because it is employing a direct program feed rather than direct reception of its primary station, WXTM(FM). Simultaneously, the identical aural programming material is aired by WXTM(FM).^{5/} W276AQ and the Dumont studio are each located far outside of the WXTM(FM) 1.0 mV/m 60 dBu) contour.^{6/}

The investigators monitored the transmissions from W276AQ and it was observed that the programming for Juke Box Radio is fully oriented to the Bergen County and the proximate area of New Jersey with significant commercial spots sold to merchants in this area. Promotional announcements, commercials, news broadcasts, etc., aired by W276AQ give the appearance that the translator is a full-service FM station serving Bergen County. Such broadcasting practices and full time local origination clearly fall within the prohibited practices recited in the Report

^{4/}It appears that initially the primary station was WBAB-FM, Channel 272, Babylon, New York. It was subsequently changed to WJUX(FM). More recently it was changed to WXTM(FM).

^{5/}It is assumed that the programming is sent to WXTM(FM) via telephone lines.

^{6/}In its FCC 302-FM (File No. BLH-941031KD), WXTM(FM) listed the Dumont address as an alternate remote control point.

and Order in MM Docket No. 88-140, FCC 90-375 regarding the KBUR-AM/KGRS-FM case (see, paragraphs 36-41).

The investigators also observed through monitoring that FM translator station W232AL, Channel 232, Pomona, New Jersey, also licensed to Gerard Turro, was simultaneously carrying the programming for Juke Box Radio identical to that rendered on W276AQ.^{2/} Consequently, the programming practices of W232AL are also in violation of some of these same FCC rules and policies.

It does not appear that the required formal applications using FCC Form 349 have been filed to change the input channels of W276AQ and W232AL in accordance with § 74.1251(b)(6) of the rules.

In conclusion the operation and broadcasting practices of W276AQ and W232AL were observed by the investigators to be in flagrant violation of the FCC rules and policies and immediate action by the Commission is requested. We wish to note that W276AQ's operation has already attracted attention and if the FCC condones this operation it should be prepared for similar operations to "spring up like mushrooms" elsewhere.

DISCUSSION

Use of Studio-Transmitter-Link. Gerard A. Turro is authorized aural intercity relay station, WMG-499, 951 MHz, associated with W276AQ. The licensed transmitter location is 75 Second St, Dumont, New Jersey. The investigators observed a 951 MHz vertically polarized antenna installed at the Dumont address

^{2/}The transmissions of W276AV were not monitored.

which is oriented in the direction of W276AQ.^{8/} Moreover, over-the-air monitoring using a hand-held scanner revealed emissions on 95.1 MHz from the studio location which were identical to those being broadcast by W276AQ.^{9/}

This clearly indicates that WMG-499 is being used as an STL to relay locally originated programming to W276AQ in violation of § 74.531 of the FCC rules. Moreover, broadcasting such program material by W276AQ is in violation of § 74.1231(b) of the FCC rules. This rule states:

"An FM translator may be used for the purpose of retransmitting the signals of a primary FM radio broadcast station or another translator station which have been received directly through space ..." (Emphasis added.)

An exception to this prescription in the rules pertains to non-commercial FM translators on reserved channels. A review of the engineering statement appended to Gerard Turro's application for WMG-499 indicates that W276AQ's primary station at the time of filing was non-commercial station WJUX(FM), Channel 204D, Franklin Lakes, New Jersey. It stated "the ICR will be used to feed 30-second spot announcement originations concerning financial support and operational communications from the WJUX(FM) studio to the W276AQ transmitter".

^{8/}The antenna appeared to be a Scala type MF960 or equivalent. Recent photographs taken by Mr. Dalton prior to February 2, 1995, which were provided to CDE show that a similar antenna oriented toward the Dumont studio is installed at the W276AQ transmitter site.

^{9/}Other communications antennas were also noted on the roof of the Dumont studio, but their purpose or use was not determined.

Since then our research of FCC records indicates that the primary station for W276AQ was changed to commercial station WXTM(FM).^{10/} In spite of the change of the primary station, the monitoring observations show that the STL is still being employed for full time local program origination.

Local Origination of Programming on W276AQ. As noted above, full-time local program origination by W276AQ through use of the STL, WMG-499, was observed by the investigators. The transmissions of W276AQ were observed to significantly exceed the limits and proscriptions contained in Section 74.1231(f) and (g) of the FCC rules in regard to local origination of aural material.

It was observed that the full-time locally originated programming for W276AQ is entirely oriented to Bergen County, New Jersey, and the surrounding area. Commercials, announcements, and other non-entertainment aural material broadcast all appear to be intended for listeners in the Bergen County area, and the operation has the appearance of a full-service FM station operating in and serving Bergen County. These practices are well demonstrated in the station promotional material and news clippings contained in the attached appendix regarding W276AQ's operation which were provided to the investigators by WVNJ(AM).

The investigators took particular note of these programming practices during their observations because it is believed that they are a clear example of unacceptable practices that the FCC discussed in the Report and Order in MM Docket No. 88-140, FCC 90-375. In paragraphs 36-41 of this R&O, the Commission discussed an

^{10/}We are aware that a letter was filed with the Commission advising of the change of the primary station. However, to our knowledge no formal application was filed with the FCC in accordance with § 74.1251(b)(6) of the rules. This rule requires formal application by FCC Form 349 any time the input or output frequency is changed. Changing the primary station to WXTM(FM) would require a change of the input frequency if direct reception is being employed.

example of an abuse of the 30-second limitation on FM translators which was alleged by KBUR-AM/KGRS-FM, Burlington, Iowa. The FCC stated in paragraph 41:

"As with the alleged abuses regarding ownership and financial support, we are also concerned by the purported abuses alleged by KBUR/KGRS. Therefore, we wish to emphasize that any Commission licensee which engages in a practice designed primarily to evade the 30-second limitation potentially subjects itself to the full panoply of Commission enforcement mechanisms. Indeed, because intentional evasion of Commission rules represents behavior which jeopardizes the Commission's ability to discharge its regulatory mandate, we view such behavior with particular disfavor."

Measurement Observations. Measurements and observations were performed by the investigators from the roof of the Hampshire House, 1590 Anderson Avenue, Whiteman Court, Fort Lee, New Jersey. The geographic coordinates of this location are North Latitude: 40° 51' 02" and West Longitude: 73° 58' 39". This test site is approximately 0.6 km southeast of the W276AQ transmitter location. The building roof used for the measurements is approximately the same height above ground and as free of obstructions as the W276AQ translator site and, based on experience, the investigators believe that the received signal levels on the two buildings are closely similar.

The following is a list of equipment used in conducting the measurements.

1. Hewlett-Packard, Spectrum Analyzer, Model No. 8591A
2. Scala CL-FM UCM, Yagi Receive Antenna (88-108 MHz) 50 ohms, SN 1194
3. Potomac Instruments, FIM-71, Field Strength Meter
4. Sony digital AM/FM receiver

000103

5. Radio Shack scanner
6. Carver, PSB-11 Synthesized Stereo Receiver
7. JPSNTR-1 DSP, noise/tone reducer (noise reduction unit)

Figure 3 contains a plot of the display for the HP spectrum analyzer centered on 99.7 MHz while connected to the Scala CL-FM antenna. The Scala antenna was carefully aligned towards the WXTM(FM) location when the plot was made.^{11/} The plot shows that the direct received signal level of WXTM(FM) taken from the antenna is nominally -78 dBm (28 μ V). Also shown in the plot of the spectrum analyzer display is WBAI, Channel 258B (99.5 MHz), New York, New York, with a signal level of -40 dBm (2.24 mV). The ratio between WXTM(FM)'s received signal to WBAI's is approximately -38 dB, whereas, +6 dB is recognized in §73.215 of the FCC rules as the 1st adjacent channel ratio required to be interference free. The high quality Carver stereo receiver was connected to the Scala antenna oriented toward WXTM(FM) and it was observed that the direct received signal of WXTM(FM) was unusable for retransmission on W276AQ due to low signal strength and severe 1st adjacent channel interference from WBAI.

The investigators also noted that W232AL, Pomona, New York, was in operation and monitoring of the translator's signal showed that it was transmitting programming identical to that of W276AQ.^{12/} Figure 4 is a plot of the HP spectrum analyzer with the Scala antenna oriented towards the W232AL transmitter site. It is shown that the received level taken from the antenna is -60 dBm (224 μ V). The signal of W232AL was monitored using the Carver receiver. The high aural quality and

^{11/}The manufacturer's specified gain for the antenna is 7 dB over a dipole with a 25 dB front to back ratio. This is considered typical of commercial FM yagi antennas.

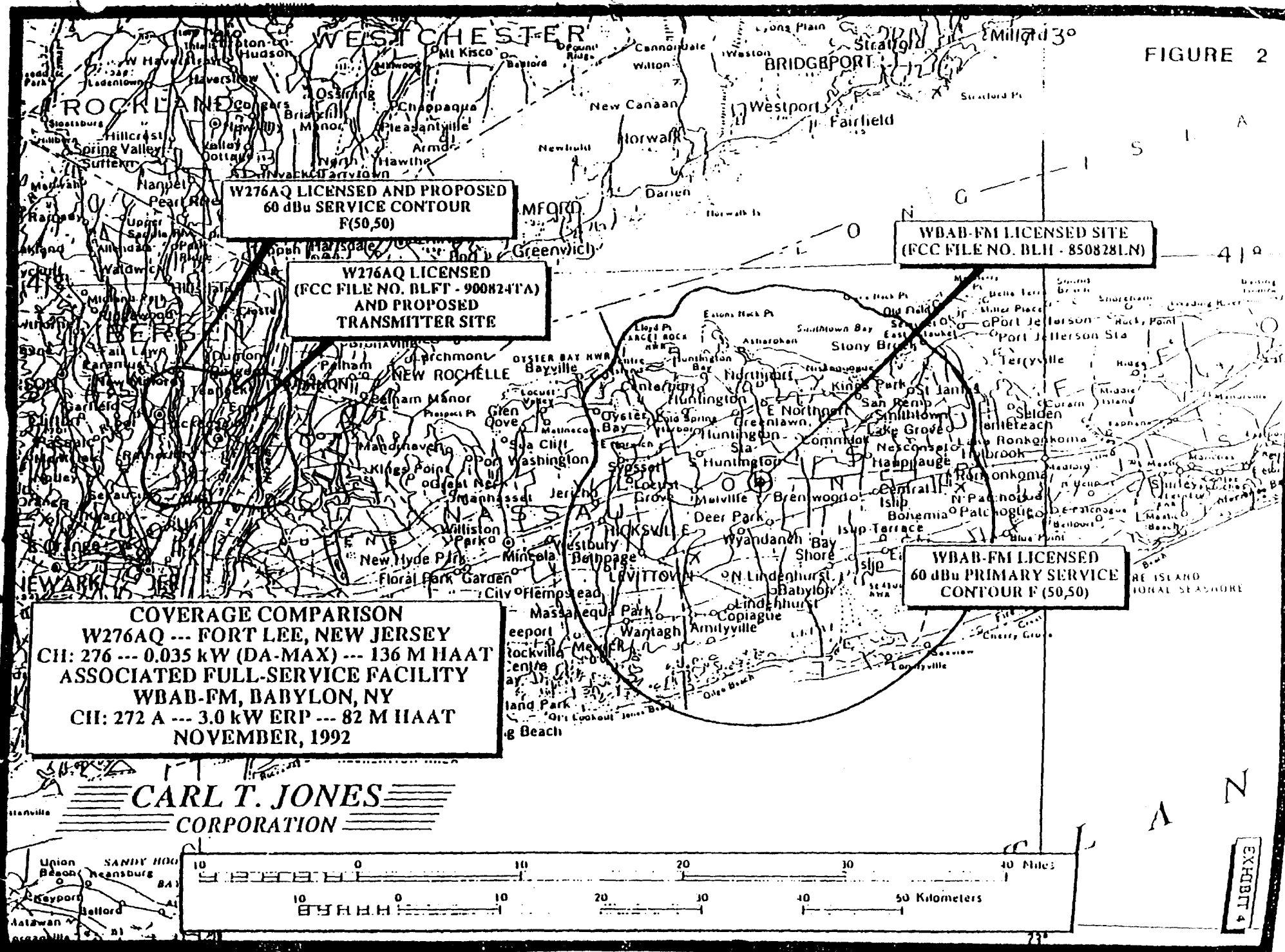
^{12/}FCC records indicate that the primary station for W232AL is WHTZ, Channel 262, Newark, New Jersey. To our knowledge no formal application has been filed to change the input frequency of the translator.

absence of noise observed may indicate that the Pomona W232AL translator is not retransmitting the signal of WXTM(FM). Instead, it may be retransmitting W276AQ or it may be receiving a direct program feed.

Monitoring observations were made from the site on 95.1 MHz. It was observed that 95.1 MHz emissions carrying the programming for Juke Box Radio were present at the building roof measurement site. Figure 5 is a plot of the spectrum analyzer display showing the presence of the emissions, however, the indicated signal levels are not relative since an antenna designed for 95.1 MHz was not employed.^{13/}

^{13/}The Scala FM antenna was used.

FIGURE 2



W276AQ LICENSED AND PROPOSED
60 dBu SERVICE CONTOUR
F(50,50)

W276AQ LICENSED
(FCC FILE NO. BLFT - 900824TA)
AND PROPOSED
TRANSMITTER SITE

WBAB-FM LICENSED SITE
(FCC FILE NO. BLH - 850828LN)

WBAB-FM LICENSED
60 dBu PRIMARY SERVICE
CONTOUR F(50,50)

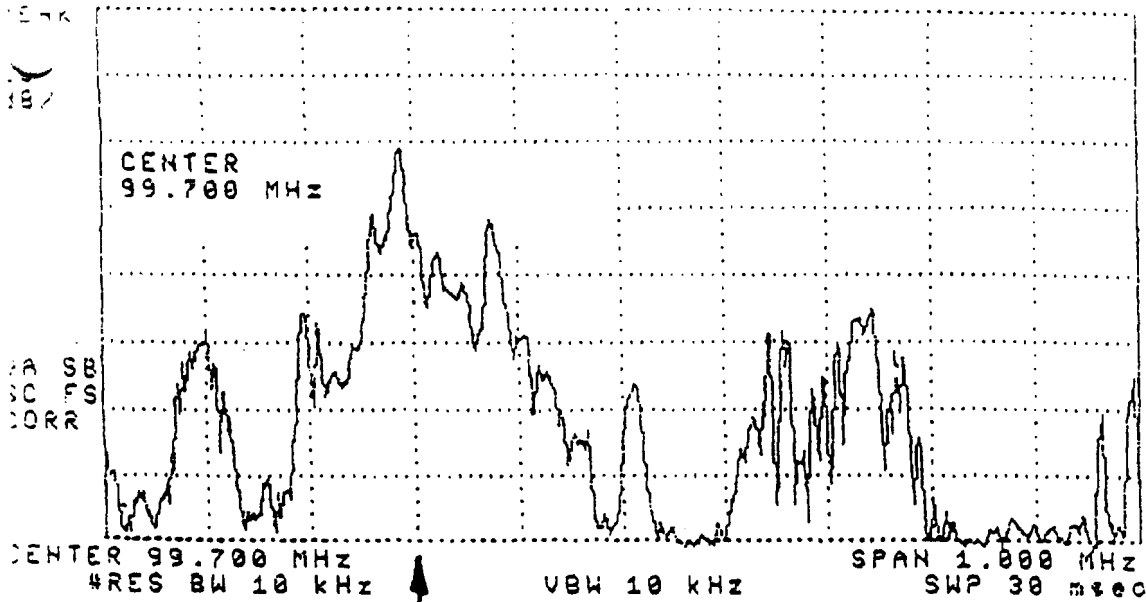
COVERAGE COMPARISON
W276AQ --- FORT LEE, NEW JERSEY
CH: 276 --- 0.035 kW (DA-MAX) --- 136 M HAAT
ASSOCIATED FULL-SERVICE FACILITY
WBAB-FM, BABYLON, NY
CH: 272 A --- 3.0 kW ERP --- 82 M HAAT
NOVEMBER, 1992

CARL T. JONES
CORPORATION

EXHIBIT 4

FIGURE 3

10:45:02 FEB 06, 1995
 15:04:19 FEB 02, 1995
 -20.0 dBm WATTEN 0 dB



CENTER
FREQ

START
FREQ

STOP
FREQ

CF STEP
AUTO MAN

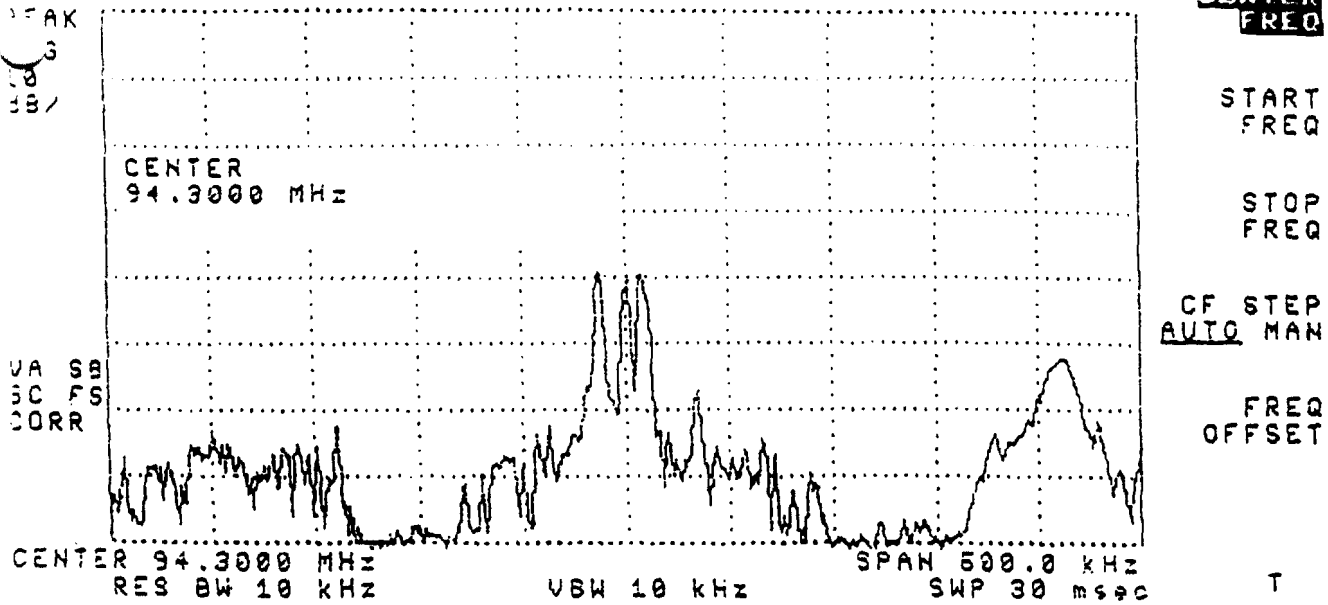
FREQ
OFFSET

T

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FIGURE 4

10:46:17 FEB 06, 1996
15:09:52 FEB 02, 1996
-20.0 dBm ATTEN 0 dB



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FIGURE 5

10149132 FEB 06, 1996
 15123167 FEB 02, 1995
 -20.0 dBm #ATTEN 0 dB

PEAK

3
 dB/

CENTER
 951.000 MHz

VA SB
 SC FS
 CORR

CENTER
 FREQ

START
 FREQ

STOP
 FREQ

CF STEP
 AUTO MAN

FREQ
 OFFSET

CENTER 951.000 MHz
 RES BW 10 kHz

VBW 10 kHz

SPAN 1.000 MHz
 #SWP 30 msec

T

STL

000109

FCC MAIL SECTION

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN 21 2 49 PM '95

JUN 21 1995

DISPATCHED BY

IN REPLY REFER TO:
1800C1-SB/RW
95020241

Mr. Gerard A. Turro, Licensee
Station W276AQ (FM), Fort Lee, NJ
687 Orchard Street
Oradell, NJ 07649

Dear Licensee:

The Commission recently received information that raises serious questions concerning the operation of Translator Stations W276AQ, Ft. Lee, NJ, W232AL, Pomona, NY and Aural Inter City Relay Station WMG-499, Dumont, NJ. Specifically, this information alleges that Mr. Gerard A. Turro, licensee of Stations W276AQ, W232AL and WMG-499, is originating all of the programming transmitted by these translator stations from a studio located at 75 Second Street, Dumont, NJ. The origination of programming by a translator station is a violation of Section 74.1231(b) and Section 74.531(c) of the Commission's Rules. Our information also suggests that Mr. Turro is simultaneously delivering this programming to Station WJUX (FM), Monticello, NY.¹ In addition, we are investigating whether Mr. Turro has engaged in an unauthorized assumption of control of Station WJUX (FM), Monticello, NY, licensed to Monticello Mountaintop Broadcasting, Inc., in violation of Section 310 (d) of the Communications Act of 1934, as amended, and Sections 73.3540 and 74.14 of the Commission's Rules.

47 C. F. R. § 74.1231 (b), (e), (f), and (g) state, in pertinent part, that:

- (b) An FM translator may be used for the purpose of retransmitting the signals of a primary FM radio broadcast station or another translator station which have been received directly through space, converted, and suitably amplified.
- (e) An FM translator shall not deliberately retransmit the signals of any station other than the station it is authorized to retransmit. Precautions shall be taken to avoid unintentional retransmissions of such other signals.

¹We note that WJUX (FM) changed call signs on April 14, 1995. Prior to this date the call sign was WXTM (FM). The call sign WJUX (FM) was previously assigned to Station WNJW (FM), Franklin Lakes, NJ, which is licensed to the Bergen County Community Broadcasting Foundation, with Mr. Turro serving as principal owner. Station WNJW (FM) is currently silent. Any reference to WJUX throughout this letter refers to the Monticello, NY, station.

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Federal Communications Commission

Docket No. 97-122 Exhibit No. MHB-7

Presented by FCC

| | | | |
|-------------|---|------------|---------------|
| Disposition | { | Identified | <u>✓</u> |
| | | Received | <u>✓</u> |
| | | Rejected | <u> </u> |

Reporter FR

Date 11-24-97

- (f) A locally generated radio frequency signal similar to that of an FM broadcast station and modulated with aural information may be connected to the input terminals of an FM translator for the purpose of transmitting voice announcements.
- (g) The aural material transmitted as permitted in paragraph (f) of this section shall be limited to emergency warnings of imminent danger and to seeking or acknowledging financial support deemed necessary to the continued operation of the translator. Originations concerning financial support are limited to a total of thirty (30) seconds an hour. . . . Emergency transmissions shall be no longer or more frequent than necessary to protect life and property.

47 C. F. R. § 74.531 (c) states:

- (c) An aural broadcast intercity relay station is authorized to transmit aural program material between FM radio stations and FM translator stations operating within the coverage contour of their primary stations.

The Commission has made no determination in this matter. In order that we may be more fully informed, please provide answers to the following:

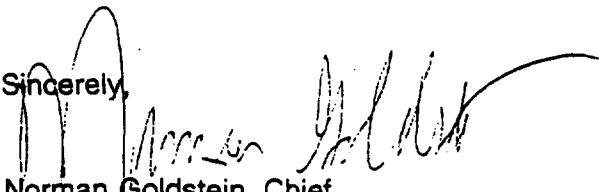
1. List the call sign, frequency, and community of license of the primary FM broadcast station(s) that is retransmitted by Stations W276AQ and/or W232AL.
2. Provide copies of any written communications that have granted permission to the licensee of Stations W276AQ and/or W232AL to rebroadcast such transmissions. These should include, but are not limited to, memoranda, correspondence, and programming contracts.
3. Since October 18, 1994, has Mr. Gerard A. Turro provided any programming for Stations W276AQ and/or W232AL from his studio location at 75 Second Street, Dumont, NJ? If so, provide a description of the programming and the dates, times and duration of all broadcasts.
4. At any time from October 18, 1994, to the present has the programming originated at the Dumont, NJ. studio been transmitted to Stations W276AQ and/or W232AL by aural intercity relay station WMG-499? If so, state the dates, times, and duration of all such transmissions.
5. Has Mr. Turro implemented the use of telephone lines now or at any time from October 18, 1994, to deliver programming to Stations W276AQ, W232AL or WJUX ? If so, state the dates, times, and duration of all such programming that has been conveyed by this method to each of the referenced stations.
6. State whether Mr. Gerard Turro has entered into a management agreement , a time brokerage agreement, or any other agreement concerning ownership, programming, staffing, sales, or operation of Station WJUX (FM). If the answer is in the affirmative, provide signed and dated copies of such agreements.

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7. With respect to Station WJUX (FM), describe in detail any involvement that Gerard A. Turro, or any individual employed by Mr. Turro or by other businesses in which Mr. Turro has an ownership interest, has had in the following aspects of the construction or operation of Station WJUX (FM):
- (a) paid the cost of constructing or outfitting the studio or transmitting facilities of Station WJUX (FM)
 - (b) guaranteed repayment of funds borrowed by the licensee of Station WJUX (FM) for the purchase of equipment or construction of the Station. If so, provide details regarding such loans or guarantee arrangements.
 - (c) controlled and had access to the WJUX's financial records and books;
 - (d) prepared and kept WJUX's financial records;
 - (e) paid WJUX's operating expenses;
 - (f) prepared and signed WJUX's checks;
 - (g) paid rent for WJUX's studio(s);
 - (h) paid rent for WJUX's antenna tower site or usage;
 - (i) interviewed, hired, or fired WJUX personnel;
 - (j) controlled what is or is not broadcast on WJUX;
 - (k) established or changed WJUX management;
 - (l) controlled and had access to WJUX's bank accounts; and
 - (m) prepared and paid WJUX's payroll, insurance, income and property taxes, withholding statements and social security obligations.

You are requested to provide, within thirty (30) days of the date of this letter, all relevant information or documentation that is responsive to the foregoing or that you feel may be useful in helping the Commission make a determination in this matter. Failure to answer fully will constitute a violation under Section 73.1015 and may subject you to serious sanctions. Commission policy requires that responses to its inquiries be signed by an officer or director of the licensee organization.

Sincerely,


Norman Goldstein, Chief
Complaints & Investigations Branch
Enforcement Division
Mass Media Bureau

000112

MMB EX.8

LAW OFFICES
KOTEEN & NAFTALIN
1150 CONNECTICUT AVENUE
WASHINGTON, D.C. 20036

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TELEPHONE
(202) 467-5700
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July 28, 1995

Mr. Norman Goldstein, Chief
Complaints & Investigations Branch
Enforcement Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Goldstein:

Transmitted herewith, on behalf of Mr. Gerard A. Turro, the licensee of FM translator stations W276AQ, in Fort Lee, New Jersey and W232AL, in Pomona, New York, is a response to your letter of June 21, 1995 concerning the operation of those facilities.

Your letter of June 21, 1995 requested a response by July 21, 1995. However, on July 20, 1995, you granted an informal request for an extension of time through today.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,


Herbert D. Miller, Jr.

cc w/ enc Mr. Gerard A. Turro

bc: (w/enc.): Herman Hurst
Wesley Weis
Rainer K. Kraus, Esq.

000113

| | |
|-----------------------------------|--|
| Federal Communications Commission | |
| Docket No. 97-122 | Exhibit No. MMB-8 |
| Presented by FCE | |
| Disposition | Identified <input checked="" type="checkbox"/> |
| | Received <input checked="" type="checkbox"/> |
| | Rejected <input type="checkbox"/> |
| Reporter | |
| Date | 11-24-97 |

GERARD A. TURRO
STATION W276AQ(FM), FORT LEE, NJ
687 ORCHARD STREET
ORADELL, NJ 07649

JUL 26 1995

July 27, 1995

Mr. Norman Goldstein, Chief
Complaints & Investigations Branch
Enforcement Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

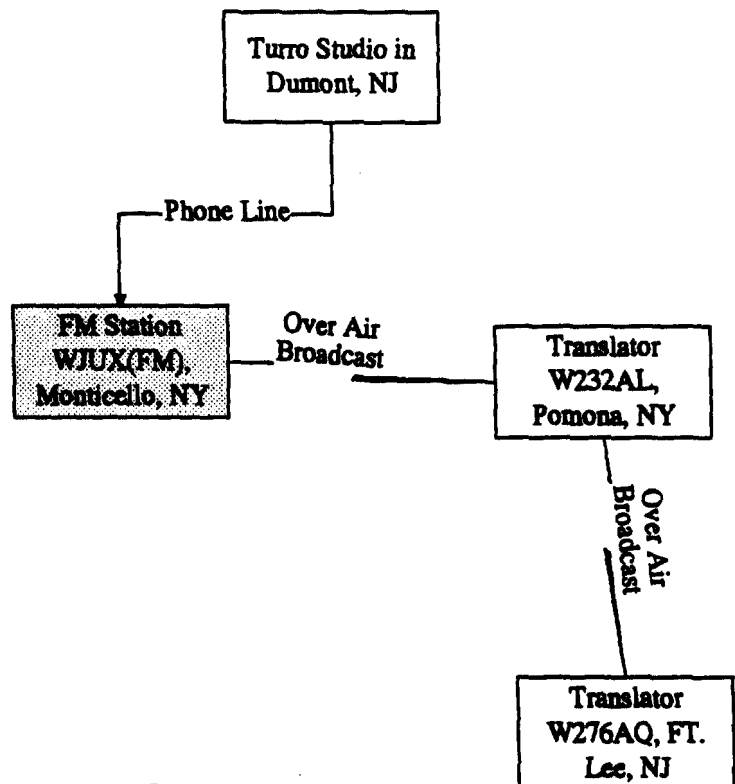
WJUX-FM

Dear Mr. Goldstein:

This is in response to your letter of June 21, 1995 concerning the operation of FM Translator Stations W276AQ, Fort Lee, New Jersey and W232AL, Pomona, New York, and Aural Inter City Relay Station WMG-499, Dumont, N.J.

According to that letter, you are in receipt of information to the effect that I originate programming for the Fort Lee and Pomona Translators from my studio in Dumont, NJ, and that I use Inter City Relay Station WMG-499 to deliver that programming to them for broadcast. You also indicate that I simultaneously deliver this programming to Station WJUX(FM), in Monticello, NY, and that you are investigating whether I have assumed control of that station.

It is true that programming which I produce at my studio in Dumont, NJ is broadcast by WJUX(FM) and rebroadcast by both translator facilities. However, the programming is delivered via telephone line to WJUX(FM), which broadcasts it pursuant to a network affiliation agreement between us, information concerning which is provided elsewhere in this letter. The programming as broadcast by WJUX(FM) is currently received off-air by an antenna located at the Pomona, NY translator facility, which rebroadcasts it pursuant to a rebroadcast agreement between us. The Pomona translator rebroadcasts are, in turn, received by an antenna located at the Ft Lee, NJ translator facility, which rebroadcasts it, again pursuant to a rebroadcast agreement between us. Intercity Relay facility WMG-499 was used to provide telemetry to W276AQ until recently; however, I took WMG-499 off the air pursuant to a letter from Michael B. Hayden, Chief, Microwave



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Branch dated June 6, 1995. Copies of that letter, and of a June 13, 1995 letter to Mr. Hayden from my consulting engineer, Mr. William J. Getz, are provided in Attachment A to this letter. Both the Pomona and Ft. Lee translators continue to receive the signal of WJUX(FM) off air as before, and to rebroadcast it, even though WMG-499 is not operating.¹

I am aware of a February 15, 1995 letter to you from Messrs Roy R. Russo and Richard A. Helmick on behalf of Universal Broadcasting of New York, Inc., the licensee of standard broadcast station WVNJ, in Oakland, New Jersey. While no copy of that letter was sent to me by its authors or by the Commission, my attorneys were able to obtain a copy from the Commission's complaint files. According to an engineering statement associated with that letter, the signal of WJUX(FM) as received at a location near my Ft. Lee translator is inadequate to provide the high quality signal which I rebroadcast. For the reasons set forth in the attached engineering statement (Attachment B to this letter), that conclusion is simply wrong; an acceptable signal generally can be received off-air at the Ft. Lee translator site. However, since a better signal can generally be received off-air at the Pomona translator, that is where the WJUX(FM) signal is received for rebroadcast, as noted above. A Cassette tape of WJUX(FM) broadcasts, as received off air at the Ft. Lee translator site from the Pomona translator and from WJUX(FM) directly, accompanies this letter.

Also according to the engineering statement associated with the Russo-Helmick letter, monitoring of Inter City Relay Station WMG-499 suggested that WJUX(FM) programming was being transmitted by that facility. That is true. I was using the WJUX(FM) signal to modulate the WMG-499 carrier, only. I was not retransmitting the WMG-499 signal. As explained in the June 13, 1995 letter to Mr. Hayden at Attachment A,

"It should be noted that the WMG-499 microwave link is in use 24 hours per day. However, only the 30-second messages and any emergency transmissions are broadcast over W276AQ. The microwave link operates in this manner for two primary reasons:

- (1) The microwave equipment is not manufactured to operate on an intermittent basis. Switching the equipment on and off every hour for a 30-second transmission will eventually lead to equipment failure.
- (2) Turro recognizes the secondary nature of the multiplexed return telemetry link. In an effort to make the 951.0 MHz transmission readily identifiable, the link must be operational 24 hours a day. In the event WMG-499 causes interference, the offended party will have the ability to easily identify the transmission source. In a once an hour, 30 second message, it would be extremely difficult to identify the interfering source." (Attachment A).

The WMG-499 signal was not being used as a source of WJUX(FM) programming. It was used to insert 30-second messages pursuant to Section 74.1231(g) of the Rules and for remote control purposes to switch from the Ft. Lee main transmit antenna to its authorized auxiliary antenna. It was also available to relay emergency warnings to the translator for broadcast to the 825,380 residents

¹ Until approximately January 10, 1995, the Pomona translator rebroadcast Briar Cliff Manor, New York station WRGX(FM). During that period, the WJUX(FM) signal was received directly off-air at the Ft. Lee translator rather than *via* the Pomona translator.

of Bergen County who currently have no local FM service. Removing WMG-499 from service had no impact on the ability of the translators continue to rebroadcast the signal of WJUX(FM), picked up off-air, as before.

I have no ownership or other interest in the licensee of WJUX(FM), present or future, and I have no desire to acquire any. WJUX(FM) is the first of what I hope will be many affiliates of my "Jukebox Radio" network, and my efforts have been directed to expanding that network. The first step was to establish and refine the format, a continuing process, and to obtain WJUX(FM) as an initial outlet to test its commercial viability. Jukebox Radio programming has been very successful, particularly in the areas served by my Ft. Lee and Pomona translators. I have had tentative discussions with the licensees of several other radio stations about affiliating, and am now exploring the feasibility of various means of satellite delivery.

The specific questions asked by your June 21, 1995 letter are answered below.

1. W232AL, Pomona, rebroadcasts the signal of WJUX(FM), Monticello, NY. W276AQ, Fort Lee, rebroadcasts the signal of W232AL. WJUX(FM) operates on a frequency of 99.70 MHz. W232AL operates on a frequency of 94.3 MHz. Until on or about January 10, 1995, W232AL rebroadcast the signal of WRGX(FM), Briar Cliff Manor, New York. WRGX(FM) operates on a frequency of 107.1 MHz. During the period when W232AL was rebroadcasting the signal of WRGX(FM), the signal of WJUX(FM) was received directly off air at W276AQ and rebroadcast.
2. Copies of rebroadcast consents are provided in Attachment C to this letter.
3. Since October 21, 1994, I have provided programming for Station WJUX(FM) from my studio at 75 Second Street, Dumont, NJ, pursuant to the agreement noted in response to question 6. That programming has consisted of music, news, weather, sports, public affairs programming, commercials, public service announcements, etc. It has been delivered by telephone line twenty-four hours per day, seven days per week, since that time, with minor outages due to technical difficulties. Translators W276AQ and W232AL have rebroadcast the WJUX(FM) programming, as noted in response to question 1, above. In addition, until I removed WMG-499 from service, I used that facility to transmit emergency warnings and hourly 30 second messages for broadcast by W276AQ, pursuant to Section 74.1231(g) of the Rules. Those 30 second messages and emergency messages were prepared for broadcast at my Dumont, NJ studio.
4. Until I deactivated WMG-499, the programming created at my Dumont, NJ studio was used to modulate the WMG-499 carrier, as noted above. However, as also noted above, WJUX(FM) was received off-air, and the WMG-499 signal was rebroadcast by W276AQ only when the hourly 30 second messages and emergency messages were being relayed.
5. The programming created at my Dumont, NJ studio has been delivered by telephone line to WJUX(FM), continuously since October 21, 1994. No such programming has been delivered by telephone line to either W276AQ or W232AL.
6. On October 16, 1994, I entered into a Network Affiliation Agreement with the licensee of WJUX(FM). A copy of the agreement, as amended, is provided in Attachment D to this letter.
7. Neither I, nor any individual I employ, nor any business in which I have an ownership interest, has

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- a. Paid the cost of constructing or outfitting the studio or transmitting facilities of Station WJUX(FM). However, I did assist Mr. Weiss (whom I have known for many years) in installing some of his equipment at WJUX(FM), including the transmitter, without charge. I also provided \$40,000 to Mr. Weiss as an inducement to enter into our network affiliation agreement.
- b. Guaranteed repayment of funds borrowed by the licensee of Station WJUX(FM) for the purchase of equipment or construction of the Station;
- c. Controlled or had access to the WJUX(FM) financial records and books;
- d. Prepared or kept WJUX(FM)'s financial records;
- e. Paid WJUX(FM)'s operating expenses, with the exception of its telephone bills. I ~~do not recall~~ the circumstances under which the bills came to me from the telephone company, but I paid them upon receipt. Steps are now being made to have the telephone bills sent to the licensee of WJUX(FM) for payment. I acted as the chief operator for WJUX(FM) until May 1, 1995, without charge.
- f. Prepared or signed WJUX(FM)'s checks;
- g. Paid rent for WJUX(FM)'s studio(s);
- h. Paid rent for WJUX(FM)'s antenna tower site or usage;
- i. Interviewed, hired, or fired WJUX(FM) personnel, with the following exception. At some time during the Fall of 1994, Mr. Weis asked me to interview an individual he was considering hiring as the station's chief engineer, to determine his qualifications. Nothing came of this, and I ultimately became the WJUX(FM) chief engineer, a position which I held until May 1, 1995.
- j. Controlled what is or is not broadcast on WJUX(FM). In that connection, the licensee of WJUX(FM) has complete discretion in the exercise of its licensee responsibilities, including the right in its sole discretion to delete or preempt network programming and to broadcast other programming which it deems appropriate.
- k. Established or changed WJUX(FM) management;
- l. Controlled or had access to WJUX(FM)'s bank accounts; or
- m. Prepared or paid WJUX(FM)'s payroll, insurance, income and property taxes, withholding statements and social security obligations.

It is my understanding and belief that all of my arrangements with the licensee of WJUX(FM), including those for the rebroadcast of WJUX(FM) programming *via* translator, are entirely consistent with Commission rules and policies. In that connection, I am providing at Attachment E to this letter copies of my January 31, 1991 letter to Mr. Alan Schneider, Chief, Auxiliary Services Branch, and a November 19, 1991 response from Mr. Roy Stewart, Chief, Mass Media Bureau. Mr. Stewart's letter clarifies that the licensee of a translator station can properly

enter into an otherwise permissible programming arrangement with the licensee of the primary station, provided that the translator station receive no "financial support, directly or indirectly, from the primary station to cover any costs associated with the operation and maintenance of the translator station" (Attachment E). W276AQ and W232AL receive no direct or indirect financial support from WJUX(FM), to cover any of the costs associated with their operation and maintenance, or otherwise. Mr. Stewart's letter also notes that any time brokerage agreement between the primary station and the translator must reflect "a bona fide, arms-length transaction between the primary station and the translator; the licensee of the translator station will have to pay the primary station a rate charge comparable to the amount charged other purchasers of brokered airtime, or an amount consistent with such charges in the local broadcast community. . ." (Attachment E). While I do not believe that the Network Affiliation Agreement with WJUX(FM) is a "brokerage agreement," I believe that it meets the requirements set forth in Mr. Stewart's November 19, 1991 letter, fully.

If I can provide additional information which would be useful in resolving this matter, please let me ~~know~~.

Very truly yours,


Gerald A. Turro

Enc.

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ATTACHMENT A

**Correspondence between
Michael B. Hayden, Chief, Microwave Branch and Mr. William J. Getz**

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FEDERAL COMMUNICATIONS COMMISSION
1270 FAIRFIELD ROAD
GETTYSBURG, PA 17325-7243

JUN 06 1995

IN REPLY REFER TO:
7140-03
1700B

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gerard A. Turro
75 2nd Street
Dumont, NJ 07628

Dear Mr. Turro,

On June 9, 1993, you applied for an intercity relay station for the expressed purpose of inserting 30 second messages seeking or acknowledging financial support for the operation of FM translator station W276AQ. You indicated that the messages would be inserted in programming received from WJUX(FM), (now WNJW), Franklin Lakes, New Jersey.

It now appears that this intercity relay station, WMG-499, is no longer needed for the stated purpose. In this regard, we note that WJUX/WNJW, Franklin Lakes, has been silent since October 25, 1994, so WMG-499 cannot possibly be used for insertion of messages.

More importantly, a review of our rules indicates that this intercity relay station may have been granted in error. Under Section 74.531 of the Commission's rules, the primary purpose of an aural intercity relay station is to transmit programming material between broadcasting stations, for simultaneous or delayed broadcasting. Here your sole purpose is to insert original broadcast information. While the rules allow multiplexing of an aural intercity relay transmitter, such use must be for an ancillary purpose, and not for the sole purpose, as you have expressly indicated. Additionally, while an intercity relay station may be used to transmit programming between a noncommercial educational FM radio station and a co-owned noncommercial educational FM translator station, the translator must be operating on a reserved channel (Channel 201-220). Here, however, W276AQ is operating on non-reserved channel 276.

In sum, use of intercity relay station WMG-499 in conjunction with WJUX/WNJW is no longer needed. Secondly, its original use was inconsistent with the intent of the rules.

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